No. 14,861

IN THE

United States Court of Appeals

For the Ninth Circuit

WILLIAM FRANCIS RUPP,
Appellant,

vs.

HARLEY O. TEETS, Warden, California State Prison, San Quentin, California,
Appellee.

BRIEF FOR APPELLEE.

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BRIEF FOR APPELLEE.

STATEMENT OF THE CASE.

Appellant is in the custody of Harley O. Teets, Warden of the California State Prison at San Quentin, California.

Rupp was tried and found guilty of murder in the first degree by a jury in the County of Orange, State of California. The conviction of this offense was affirmed by the California Supreme Court on August 14, 1953. (*People v. Rupp,* 41 Cal. 2d 371.) Petitioner thereafter sought and was denied a petition for writ of habeas corpus in the federal district court. (*Rupp v. Teets,* 117 Fed. Supp. 376).

The appeal from this denial was dismissed as frivolous by the court of appeals since petitioner had not exhausted his state remedies. (*Rupp v. Teets,* 214 Fed. 2d 312.)

Thereafter, petitioner sought a writ of habeas corpus in the California Supreme Court. This petition was denied on November 17, 1954 without opinion. Petitioner sought a writ of certiorari as a result of the denial of the petition for writ of habeas corpus in the California Supreme Court. Certiorari was denied on March 28, 1955, and petitioner again sought a writ of habeas corpus in the United States District Court for the Northern District of California, Southern Division. This petition was denied by the district court on June 24, 1955. (See RT 20-25.) The time for filing the notice of appeal elapsed, petitioner then filed another petition which was denied on August 4, 1955 by the district court (CT 16-17), and a further stay of execution was granted.

STATEMENT OF THE FACTS.

The sordid details of the crime of which appellant has been convicted are fully set forth in the opinion of the Supreme Court of the State of California. (*People v. Rupp,* 41 Cal. 2d 371, 260 P. 21.) They are not challenged and will not be repeated here.

The material procedural facts relating to the conviction are as follows: Rupp was tried and found guilty of the crime of murder in the first degree by

a jury in the County of Orange, California. He was represented by counsel at the trial. In a separate proceeding the same jury found him to be sane at the time of the commission of the offense.

An appeal was taken to the Supreme Court of California. On this appeal Rupp contended that the California trial court erred in rulings on the admission of evidence and instructions to the jury. It was also argued that it was error to try the issue of insanity before the same jury which heard evidence concerning the commission of the crime. There was also a claim of prejudice resulting from certain remarks of the trial judge. No federal constitutional questions were raised on the appeal. (See 41 Cal. 2d 371, 377.)

The California Supreme Court resolved the question of law against Rupp and the judgment was affirmed. Certiorari was not sought. Petitioner subsequently sought to raise the present contention in a writ of habeas corpus directed to the California Supreme Court, which was denied. He now appeals from a denial of a writ raising these same contentions by the United States District Court.

APPELLANT'S CONTENTIONS.

I.

The court below erred in denying the petition for writ of habeas corpus without granting a hearing.

II.

The court erred in not finding that the California trial court denied petitioner due process of law by excluding certain medical-psychiatric testimony at the trial which was relative to petitioner's sole defense.

III.

The court below erred in not finding that the California trial court denied petitioner due process of law when it required him to submit to trial on his plea of not guilty by reason of insanity by the same jury which found him guilty of the crime charged in which the jury had been prejudiced by the remarks of the trial judge.

SUMMARY OF APPELLEE'S ARGUMENT.

I.

Petitioner has waived the alleged errors by his failure to raise these questions on his appeal to the California Supreme Court. Petitioner has not exhausted his state remedies.

II.

The alleged exclusion of certain medical-psychiatric testimony from the trial does not constitute a denial of due process since the Supreme Court of California has ruled that the evidence was irrelevant as to any elements of the crime charged under California law.

III.

The allegation that the trial jury was prejudiced by a certain remark of the trial judge does not present a federal question.

ARGUMENT.

I.

PETITIONER HAS WAIVED THE ALLEGED ERRORS BY HIS FAILURE TO RAISE THESE QUESTIONS ON HIS APPEAL TO THE CALIFORNIA SUPREME COURT. PETITIONER HAS NOT EXHAUSTED HIS STATE REMEDIES.

Petitioner waived the matters raised in the present petition by his failure to follow the established procedural rule in California which requires matters to be raised on appeal or be deemed waived. (*In re Dixon,* 41 Cal. 2d 756; *In re McInturff,* 37 Cal. 2d 876 [236 Pac. 2d 574]; *In re Connor,* 16 Cal. 2d 701 [108 Pac. 2d 10]. Cf. *Brown v. Allen,* 344 U.S. 443, 505.) The California Supreme Court in the case of *In re Dixon,* 41 Cal. 2d 756, 759, stated that "habeas corpus cannot serve as a substitute for an appeal, and, in the absence of special circumstances constituting an excuse for failure to employ that remedy, the writ will not lie where the claimed errors could have been, but were not, raised upon a timely appeal from a judgment of conviction."

Petitioner was granted an appeal from his conviction to the California Supreme Court; however, no federal constitutional questions were raised on the appeal. (*People v. Rupp,* 41 Cal. 2d 371, 377.)

Certainly, the California procedural rules that does not permit the writ of habeas corpus to be used as a substitute for an appeal does not violate due process. Indeed, federal courts follow the same rule that the writ of habeas corpus cannot be used to perform the function of an appeal. (*Sunal v. Large,* 332 U.S. 174; *Goto v. Lane,* 265 U.S. 393, 402; *Riddle v. Dyche,* 262 U.S. 333; *Craig v. Hecht,* 263 U.S. 255, 277; also, see *Dusseldorf v. Teets,* 209 Fed. 2d 754.)

Petitioner cannot exhaust his state remedies by the simple expedient of wilfully or negligently failing to present a question in the proper manner and at the proper time to the state court.

The orderly, equal, and just administration of criminal law requires that petitioners be required to raise all objections at the earliest possible moment. He should not be permitted to reserve a case for later use.

Indeed, it is well-settled that there can be no exhaustion of state remedies until there has been submitted a petition that conforms to state procedural requirements.

Buchanan v. O'Brien, 181 Fed. 2d 601 (1st Cir. 1950);

Willis v. Utecht, 185 Fed. 2d 810 (8th Cir., 1950);

United States ex rel. Calvin v. Claudy, 95 Fed. Supp. 732 (D.C., 1951).

The United States Supreme Court has stated this rule in the case of *Brown v. Allen,* 344 U.S. 443, at 458, as follows:

" . . . So far as weight to be given to the proceedings in the courts of the state is concerned, a United States district court, with its familiarity with state practice is in a favorable position to recognize adequate state grounds in denials of relief by state courts without opinion. A fortiori, where the state action was based on an adequate state ground, no further examination is required, unless no state remedy for the deprivation of federal constitutional rights ever existed."

II.

THE ALLEGED EXCLUSION OF CERTAIN MEDICAL-PSYCHIATRIC TESTIMONY FROM THE TRIAL DOES NOT CONSTITUTE A DENIAL OF DUE PROCESS SINCE THE SUPREME COURT OF CALIFORNIA HAS RULED THAT THE EVIDENCE WAS IRRELEVANT AS TO ANY ELEMENTS OF THE CRIME CHARGED UNDER CALIFORNIA LAW.

Appellant alleges that he was denied the right to produce evidence of his mental state at the time of the commission of the crime, which evidence was designed to negate any specific intent on his part to commit the crime charged.

It is true that appellant offered certain expert testimony to disprove that he had a certain specific intent. This testimony was rejected and an offer of proof was made. Petitioner's appeal to the Supreme Court of California largely centered on this point. The Supreme Court of California held that the evidence was properly rejected because under the law of California the specific intent which appellant sought to disprove was not in issue. See *People v. Rupp,* 41 Cal. 2d 371, 379, et seq.

The courts of California define the elements of the crime of murder. Appellant's offered testimony was not relevant to any of those elements. The question involved is purely a matter of state law, specifically resolved by the highest court of the state.

III.

THE ALLEGATION THAT THE TRIAL JURY WAS PREJUDICED BY A CERTAIN REMARK OF THE TRIAL JUDGE DOES NOT PRESENT A FEDERAL QUESTION.

The appellant alleges that a certain remark made by the trial judge was prejudicial. The remark was held to be proper by the California Supreme Court, 41 Cal. 2d 371, 382. Manifestly, no federal question is presented. (*United States, ex rel. Bongiorno v. Ragen,* 7th Cir. 1945, 146 Fed. 2d 349; *United States, ex rel. Carr v. Barton,* 2d Cir. 1949, 172 Fed. 2d 419.)

Dated, San Francisco, California,
January 13, 1956.

Respectfully submitted,

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